

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHEWY, INC.,

Plaintiff/Counter-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counter-Plaintiff.

Case No. 1:21-cv-01319 (JSR)

**[PROPOSED] ORDER ON PLAINTIFF'S APPLICATION TO STRIKE THREE
SECTIONS FROM DEFENDANT'S OPENING EXPERT REPORTS**

WHEREAS, on November 22, 2021, Defendant International Business Machines Corporation ("IBM") served the Opening Expert Report of Douglas C. Schmidt ("Schmidt Report") and the Opening Expert Report of Dr. Andrew Cockburn ("Cockburn Report");

WHEREAS, on December 3, 2021, Plaintiff Chewy, Inc. ("Chewy") requested leave to strike the following sections of these reports because, in Chewy's opinion, those sections contain arguments/positions that were not previously disclosed to Chewy (e.g., in IBM's infringement contentions):

1. Schmidt Report, Ex. E, paragraphs 11, 26-27, 32-39, 48, 54-60;
2. Cockburn Report, Ex. D, paragraphs 85-86, 90, 92-93 and cover report paragraph 105;
3. Cockburn Report, Ex. D, paragraphs 92-93 and 115;

WHEREAS, on December 6, 2021, the Court ruled that, with regard to issues 1-2 above, (a) the arguments/positions are different and Chewy has demonstrated prejudice based on the difference, (b) to address the prejudice, Chewy shall have additional time to take discovery on those issues, including depositions and document discovery, and (c) all expenses for taking such

discovery, including expenses for court reporters and travel, and attorneys' fees, are to be paid by IBM;

WHEREAS, on December 6, 2021, the Court denied relief to Chewy on issue 3 above;

NOW THEREFORE, considering Chewy's application to strike the above-listed sections from IBM's expert reports:

IT IS HEREBY ORDERED THAT:

The close of discovery is extended by approximately four weeks to allow Chewy to take discovery, including depositions and document discovery, on issues 1-2 above;

All expenses for taking such discovery, including expenses for court reporters and travel, and attorneys' fees, are to be paid by IBM;

The final pretrial conference shall be held on March 3, 2022 at 2 pm; and

The parties are to submit a revised case management plan consistent with this Order.

Dated: 12/10/21



United States District Judge